

(1925) 01 CAL CK 0031
In the Calcutta High Court

Purna Chandra Thakur and Others

APPELLANT

Vs

Ramesh Chandra Acharjya Chowdhury and Others

RESPONDENT

Date of Decision : 21-01-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 157

Citation : AIR 1925 Cal 1218 : 87 Ind. Cas. 753

Hon'ble Judges : Suhrawardy, J;Cuming, J

Bench : Full Bench

Judgement

Suhrawardy, J.—The suit out of which this appeal arises was brought by the Receiver of the estate of Khitish Chandra, Acharjee Choudhury for ascertainment of fair and equitable rent u/s 157, Bengal Tenancy Act, in respect of lands in occupation of the defendants and for recovery of arrears of such rent from 1320 to the third quarter of 1393 B.S. with damages. The defence was that the land in suit did not belong to the plaintiffs taluk, but was a part of a neighbouring taluk owned by one Radharaman Nag and others, and that the Defendants Nos. 1 to 4 had taken patni settlement of it from the Nags in 1879. The main defence, therefore, was that there was no relationship of landlord and tenant between the plaintiff and the defendants. The Court of first instance found that the land, as a matter of fact, belonged to the plaintiffs' taluks, but as the defendants had set up their right as tenure-holders adversely to the plaintiff for more than 12 years, they had acquired the limited interest of a tenure-holder in the lands and assessed rent as against Defendants Nos. 1 to 4 only and dismissed the plaintiff's claim against the other defendants. On appeal by the plaintiff and cross-appeal by the defendants, the learned Additional District Judge decreed the plaintiffs' suit with some modifications. The Defendants Nos. 1 to 4, who may be described as the principal defendants, and Defendants Nos. 5, 6, 10, 11, 12, 24 and 49, contend that the decision of the lower appellate Court is wrong on the following grounds: first, that the suit should have been dismissed as the plaintiff failed to prove his title to the lands in suit. This ground is directed against the finding of the learned Judge that the lands belonged to the plaintiff's taluk. The

fact is that there are two adjacent taluks, one called Gangamala, and the other known as Taluk No. 190. Taluk Gangamala was sold for arrears of revenue and purchased by the plaintiff in 1883. In 1895 the plaintiff brought a suit for possession of the lands in suit against the owner of Taluk No. 190. On the 9th May 1902 that suit was finally decreed by the High Court. On the 30th January 1905 plaintiff obtained delivery of symbolical possession through Court and brought the present suit on the 18th January 1917. Both the Courts below have relied on the decision of the suit brought by the plaintiff against the Nags who were the owners of Taluk No. 190. The decree in that suit decided finally as between the plaintiff and the Nags that the lands in suit belonged to the plaintiff's Taluk Gangamala. It is contended on behalf of the appellants that the decision in that suit cannot in law operate as *res judicata* against the defendants and, therefore, the plaintiff is bound to prove his title independently of the decision in the previous suit. In support of" this contention reliance has been placed upon the cases of *Niazullah Khan v. Nazir Begam* [1892] 15 All. 108, and *Shib Chandra Roy Chowdhury v. Harendra Lal Rai Chowdhury* 22 C.W.N. 721. The Allahabad case has no bearing on the present question as it was a case of assignment and not a lease. The decision in the case of *Shib Chandra Roy Chowdhury v. Harendra Lal Rai Chowdhury* 22 C.W.N. 721 contains some observations based on the doctrine of representation, holding that in the case of a permanent tenure-holder the landlord does not represent the tenant so as a decree against the former would estop the latter. That decision is based on the case of *Seshappaya v. Venkataramana Upadya* [1910] 33 Mad. 459, which holds that a decision for or against a superior landlord does not operate as *res Judicata* against a tenant holding a permanent subordinate interest. In the view we take of the findings of the Courts below on this point, we are relieved of the necessity of examining the ratio of these decisions. But were it necessary to do so, we would feel considerable hesitation in following them without a word of protest. See *Asghar Reza Khan v. Mahomed Mehdi Hossein Khan* [1908] 30 Cal. 556. Even if it, is conceded that the decision in the suit brought by the plaintiff against the Nags will not operate as *res judicata* (it does not appear that the Courts below used it as such), there can be little doubt that it is a strong piece of evidence as to whom the rent is payable. The plaintiff brought a suit for establishment of title and possession as zamindar against the Nag-; from whom the defendants had obtained their alleged settlement. The question relating to the nature of the defendant's settlement was outside the scope of that suit and the only issue on which the parties went to trial was as to who was the owner of the lands in suit; or, if there were tenants on the land, who was entitled to receive rent from the tenants. The result of the defendant's lessor having lost the suit was to transfer the right of receiving rent from the Nags to the plaintiff. The defendants cannot aver that they are not liable to pay rent to any one. In fact, their case is that they hold a subordinate interest and they are liable to pay rent for the patni to whoever it belongs. If the plaintiff was not entitled to recover rent from them the Nags must be so entitled, But it was decided, as between the plaintiff and the Nags, that the Nags were not, entitled to receive

rent. The decision, therefore, in bat suit is a good piece of evidence as against the tenants on the question as to who is entitled to recover rent from them. It having been found that suit that the land in dispute did not belong to the Nags who had, therefore, no right to settle it with the defendants, the defendants cannot claim to be permanent tenure-holders. Hence the theory of representation, or the absence of it, on which Shib Chandra Roy Choudhury's case proceeds does not apply to the present case.

2. There is another piece of important evidence in support of the plaintiff's case and that is the record-of-rights produced and proved on behalf of the defendants. The record-of-rights shows that the lands in suit belong to the plaintiffs' Taluk Gangamala. There is nothing to rebut the presumption of the correctness of the entry and the Court was justified in coming to the conclusion that the plaintiff was the owner of the lands in suit.

3. The second point raised by the appellants (Defendants Nos. 1 to 4) is that the plaintiff's suit for possession was barred by limitation and, therefore, his suit for assessment of fair and equitable rent, is also barred. This objection is based on the fact that the plaintiff brought this property in 1883 and did not bring a suit for possession against the defendants, till 1917. But it overlooks the fact that the plaintiffs could not bring a suit for assessment of rent against the defendants who are the tenants before they could establish their right against the persons from whom they derived their title. Plaintiff accordingly brought a suit against the defendant's lessor, and having succeeded in that suit he took symbolical possession of the lands in suit within 12 years before the institution of the present suit. The plaintiff's cause of action as against the defendants, therefore, arose when he took delivery of possession and became entitled to receive rent. He could not sue the defendants in ejectment because the defendants were tenants on the land either as tenure holders or as occupancy raiyats as found by the lower appellate Court. This objection, therefore, fails.

4. The third contention raised by the appellants (Defendants Nos. 1 to 4) is that they asserted their patni tight in these lands from 1879, the date on which the patni lease was granted by the Nags in their favour and, therefore, they have acquired the interest of a patnidar in the land in suit. This contention also has no substance. The defendants did not hold the patni adversely to the plaintiff from 1879 because the plaintiff had no title. In the lands then. They were holding the lands under a lease from the Nags who had set themselves up as the owners of the land. There is no finding by the learned Additional District Judge as to when the plaintiff came to know of the defendants' alleged assertion of patni interest; but he observes that the fact that they held the land in suit in patni did not come to the knowledge of the plaintiff before he instituted the suit in 1895 and that the plaintiff had no right to take possession of the disputed land or to claim rent from the tenants so long as he did not get delivery of possession as against the Nags. It may, therefore, be taken at the best in favour of the defendants, that they were holding adversely to the plaintiff from the date from which the plaintiff's

right to sue for possession or rent accrued, namely, the 30th January 1905 when he obtained symbolical possession, and the right to recover rent from the defendants. Then again the record-of-rights filed by the defendants show that they are entered there as tenure-holders, whose rent was liable to be assessed. Their right, therefore, as patnidars was not admitted at the time of the publication of the record-of-rights and it cannot, therefore, be said that they held such right adversely to the plaintiff, when he became entitled to possession. It is not found by any of the Courts below that the presumption raised by this entry in the record-of-rights was in any way rebutted by the defendants.

5. The last point urged on behalf of the appellants is that the decree for assessment of rent should have been passed against Defendants Nos. 1 to 4 alone and it should have been held that as the other defendants are holding under Defendants Nos. 1 to 4 they are not liable to pay rent directly to the plaintiff. On this point the learned Additional Judge observes that the other defendants set up the Defendants Nos. 1 to 4 as their landlords. He finds that Defendants Nos. 1 to 4 are merely occupancy raiyats, they being in actual occupation of some portion of the disputed land for a long time. He accordingly considers that the other defendants holding likewise had the same status as Defendants Nos. 1 to 4.

6. The case of all the defendants is that Defendants Nos. 1 to 4 were tenure-holders and as such had settled the lands with the other defendants. The claim of Defendants Nos. 1 to 4, that they were tenure-holders, has not been established. The position of the other defendants, therefore, is that they were brought on the land by persons having no title for authority; but as they have been in possession of the land for a long time they have acquired right of occupancy in it. The occupancy right to which the Defendants Nos. 1 to 4 have been found to be entitled is only in respect of the portion of the land in suit of which they are in actual possession. It was not claimed, and it cannot be extended over other portions of the land in suit of which the other defendants are in possession. The result of the finding on the other issues is that the plaintiff's title to the land in suit unencumbered by the alleged claim of Defendants Nos. 1 to 4 as holders of an intermediate interest has been established, thus creating a direct relation between the plaintiff and the occupants of the land, the other defendants. In this view the decree passed by the Court of appeal below is correct and should be maintained and this objection overruled.

7. All the points taken on behalf of the appellants failed, and the appeal is dismissed with costs.

Cuming, J.

8. I agree.